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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

JACKSON BROWNE, an individual,  
Plaintiff,

v.

JOHN MCCAIN, an individual; THE  
REPUBLICAN NATIONAL  
COMMITTEE, a non-profit political  
organization; THE OHIO  
REPUBLICAN PARTY; a non-profit  
political organization,

Defendants.

No. CV08-5334 RGK (Ex)

**DECLARATION OF JOHN  
MCCLELLAND IN SUPPORT OF  
DEFENDANT OHIO REPUBLICAN  
PARTY'S MOTION TO DISMISS, etc.**

Date: December 8, 2008  
Time: 9:00 am  
Judge: Hon. R. Gary Klausner  
Place: Courtroom 850

I, John McClelland, declare as follows:

1. I am employed as the Communications Director for the Ohio Republican Party ("ORP") located in Columbus, Ohio, a defendant in the above-captioned action. I began working for the ORP in August of 2005 as Communications Director.

2. I have personal knowledge of the matters set forth in this Declaration except as to those matters set forth on information and belief, and as to those matters I am informed and believe them to be true. If called as a witness, I could and would testify competently to the matters set forth herein.

1           3.     I am a resident of Ohio and have lived in Ohio since March of 1997. I  
2 have only been to California once. In January of 2008, I travelled to California in my  
3 capacity as Communications Director for the ORP at the invitation of Mark Preston,  
4 Political Editor of CNN, Washington D.C. Political Division. I arrived in California  
5 on January 30, 2008 and left on February 1, 2008.

6           4.     CNN wanted the ORP to co-sponsor a presidential debate with the Ohio  
7 Democratic Party. Mr. Preston suggested that the ORP send representatives to the  
8 presidential debates taking place in California. I, along with Kevin DeWine, Deputy  
9 Chairman and Jason Mauk, Executive Director, attended the Republican Presidential  
10 Debate at Reagan Library in Simi Valley California.

11          5.     Throughout the 2008 election campaign, the ORP has utilized web videos  
12 to generate news coverage in Ohio regarding the November 4, 2008 elections. The  
13 purpose of these web videos is to gain media access. The ORP does not use the web  
14 videos as a fundraising tool or to solicit contributions. The targeted audience of these  
15 web videos is voters in Ohio.

16          6.     As Communications Director, I am responsible for updating the content  
17 found on the ORP web site at [www.ohiogop.org](http://www.ohiogop.org). I am also responsible for creating  
18 and producing web videos. The website design and hosting is provided by Midnet  
19 Media, a company with office in Columbus, Ohio, in Minster Ohio, and Chicago,  
20 Illinois.

21          7.     The ORP maintains a link on its website found at  
22 [http://www.ohiogop.org/gop\\_tv](http://www.ohiogop.org/gop_tv) called "Ohio GOP tv" that contains a link to YouTube  
23 postings specifically targeted at Ohio voters found at  
24 <http://www.youtube.com/gopohio>. As Communications Director, I am the person at  
25 the ORP who posts information at the ORP Ohio GOPtv link. I utilize Apple based  
26 software programs called "Final Cut Express" and "imovie" to upload the web videos  
27 that I produce for the ORP  
28

1           8.     Beginning on or about July 29, 2008, in preparation for the Democratic  
2 Presidential Nominee, Senator Barak Obama's scheduled visit to Ohio during the  
3 week of August 4, 2008, I started work on a web video to provide criticism and  
4 commentary on Obama's energy strategy. This is the web video that is referenced in  
5 paragraph 2 of the Complaint as the "Commercial", and hereinafter referred to as  
6 "Political Video". Attached hereto as Exhibit 1 (manually filed) is a true and correct  
7 copy of the Political Video.

8           9.     The Political Video used specific "sound bites" regarding Obama's  
9 suggestion to inflate tires in order to demonstrate that Obama's energy strategy was  
10 the same as no strategy at all. The song "Running on Empty" seemed to be a perfect  
11 fit to convey this message especially in light of the rising price of gasoline at the time  
12 described as the "Pain at the Pump" in the video and the heightened concern about the  
13 United States' dependency on foreign oil.

14          10.    When I was working on the Political Video, I was not familiar with  
15 Jackson Browne's music and did not know where he lived or that he was politically  
16 active. I purchased the song "Running on Empty" ("Song") from itunes for use in the  
17 Political Video. Attached hereto as Exhibit 2 (manually filed) is a true and correct  
18 copy of the Song that I downloaded from itunes. The total Song length is 4:56  
19 minutes. The Political Video used approximately 30 seconds of the Song of which 9  
20 seconds is lyrical and 21 seconds is musical.

21          11.    The total length of the Political Video is one minute and twenty seconds.  
22 The following is a description of the content of the Political Video. The Political  
23 Video begins with an excerpt from a local Ohio news channel that discussed the "pain  
24 at the pump." After the reporter asked how to bring down gas prices "here in northeast  
25 Ohio and across the U.S.A.?", I cut to a clip of Obama answering "making sure your  
26 tires are properly inflated." I then put "What!?! " standing alone. Next, the Political  
27 Video Obama's energy plan with that of Senator McCain and showed McCain  
28 speaking at a rally pointing out that it is low-income Americans that are being hurt

1 because of our dependence on foreign oil and rising gas prices. Next, the Political  
2 Video used another stand alone question asking "What's that Obama plan again?"  
3 Here, at approximately 50 seconds into the Political Video, the Political Video used  
4 approximately 21 seconds of music without lyrics from the Song in the background  
5 and show Obama saying "... we can save all the oil they're taking about getting off  
6 drilling if everyone was just inflating their tires." Senator Hillary Clinton is shown  
7 saying "shame on you, Barack Obama." At 1 minute and 11 seconds into the Political  
8 Video, the lyrics of "running on empty" begins playing while a picture of Obama is  
9 shown with "Barack Obama: No Solutions" which changes to "Barack Obama: Not  
10 Ready to Lead." The Political Video ends with a screen stating "paid for by the Ohio  
11 Republican Party. [www.ohiogop.org](http://www.ohiogop.org). Not authorized by any candidate or candidate  
12 committee." Browne's voice is heard for 9 seconds at the end of the Political Video.

13 12. On August 4, 2008, I posted the Political Video on the ORP user link on  
14 YouTube. After posting the Political Video on the Ohio YouTube user link, on  
15 August 4, 2008, I emailed a Press Release containing the link to the Political Video at  
16 Ohio GOP on YouTube using a software program called "Constant Contact".  
17 Attached hereto as Exhibit 3 is a true and correct copy of the email press release I sent  
18 on August 4, 2008.

19 13. As set forth in detail below, the target audience of this email Press  
20 Release was Ohio residents and news organizations and people interested in Ohio  
21 politics. It was not aimed at a California audience.

22 14. The email addresses of the individuals to whom I sent the Press Release  
23 using Constant Contact were separated into the following categories: (1) News Links  
24 [378 email addresses]; (2) Local Media [222 email addresses]; (3) National Media [25  
25 email addresses]; (4) Statehouse Press Corps [103 email addresses]; (5) ORP [40 email  
26 addresses]; (6) Value Voters (Coalition) [6 email addresses]; (7) Opinion Leaders  
27 (Coalition) [611 email addresses]; (8) County Party Leadership [16 email addresses];  
28

1 and (9) State Committee [47 email addresses]. The total number of emails addresses is  
2 1448.

3 14. The News Links category contains email addresses of individuals who  
4 have signed-up to receive a daily email from the ORP with links to stories from Ohio's  
5 major newspapers and other national publications.

6 15. The Local Media category contains email addresses for Ohio media  
7 outlets that do not have a reporter assigned to the Ohio Statehouse.

8 16. The Nation Media category contains email addresses for reporters from  
9 media outlets outside Ohio that have covered politics in the Buckeye State. These  
10 addresses have been obtained by the ORP's communications department based upon  
11 the reporters' contact with the ORP.

12 17. The Statehouse Press Corp category contains email addresses for  
13 reporters and media outlets that cover Ohio politics.

14 18. The Value Voters category contains email addresses of individuals who  
15 represent organizations or groups focused on social issues in Ohio.

16 19. The Opinion Leaders category contains email addresses of individuals in  
17 Ohio who are "opinion leaders" in their community. This list of email addresses was  
18 put together by the ORP political staff with input from county party leadership in  
19 Ohio's 88 counties. This list also includes individuals who are involved in Ohio  
20 Republican politics, such as legislators, statewide elected officials and their staff.

21 20. County Party Leadership category contains email addresses of the Ohio  
22 county party chairs and their staff.

23 21. The State Committee category contains email addresses of the members  
24 of the ORP State Committee.

25 22. The ORP did not pay to have the Political Video run as a political  
26 advertisement on any television station.

27 23. The Political Video did not include any solicitations for donations to the  
28 ORP and the email was not sent to the ORP donor list.

24. On August 6, 2008, Jason Mauk, Executive Director of the ORP instructed me to remove the Political Video from YouTube. When I received these instructions, I deleted the Political Video from the Ohio user group's YouTube posting. The ORP has not used the Political Video since that time.

I declare under penalty of perjury the foregoing is true and correct. Executed this 14<sup>th</sup> day of November, 2008.

John McClelland